

Assembly Bill No. 3036

CHAPTER 1115

An act to amend Sections 2341 and 2854 of, and to add Section 1513.2 to, the Probate Code, and to amend Sections 366.4 and 11405 of the Welfare and Institutions Code, relating to conservators and guardians.

[Approved by Governor September 30, 2002. Filed
with Secretary of State September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3036, Corbett. Guardianship.

(1) Existing law provides for the establishment of guardianships.

This bill would require the court, to the extent resources are available, to implement procedures to ensure that every guardian annually completes and returns a status report. The bill would require the form to include a specified statement. The bill would provide that a guardian who willfully submits any material information required by the form which he or she knows to be false is guilty of a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program.

The bill would require the clerk of the court to mail to the guardian one month prior to the date the status report is required to be returned a blank status report form and a notice informing the guardian that he or she is required to complete and return the status report. The bill would provide for the confidentiality of the report. The bill would require the court to attempt to obtain the information required in the report from the guardian or from other sources if the status report is not completed and returned or if the court finds that further information is needed. The bill would also require the court to order the guardian to make himself or herself available to the investigator for purposes of investigation of the guardianship, or to show cause why the guardian should not be removed, if the court is unable to obtain the information required in the report within 30 days after the status report is due. By imposing additional duties on court employees, the bill would create a state-mandated local program.

The bill would also require the Judicial Council to develop a form for the status reports, as specified, and report to the Legislature no later than December 31, 2004, regarding the costs and benefits of utilizing the annual status reports.

(2) Existing law requires the Department of Justice to maintain a Statewide Registry of conservators and guardians, and requires all persons who wish to serve as a conservator or guardian, or who are

currently serving as a conservator or guardian, to register and reregister with the Statewide Registry, except as provided. Existing law allows the Department of Justice to charge a reasonable fee to persons registering and reregistering with the Statewide Registry for the cost of that registration. Existing law also prohibits a superior court from appointing or permitting a person to serve as a private professional conservator or private professional guardian unless the person has filed certain information with the county clerk.

This bill would except certain nonrelated guardians of the person of a minor, appointed under specified circumstances by the juvenile court or the probate court, from the registration and filing requirements.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows:

(a) Children who are in foster care or at risk of entering foster care because their parents are unable to provide care and supervision are in need of stable and permanent relationships with responsible adult caregivers. When neither reunification with the parent nor adoption is available as a permanent plan for the child, legal guardianship can provide the safety and security of a permanent home for the child. While many relatives become legal guardians of foster children, foster parents are frequently willing to commit to becoming guardians of foster children in their care. Thus, foster parents are a valuable resource for the provision of permanency and stability for children who cannot be returned to their parents.

(b) Research shows that foster parents will often commit to becoming legal guardians for sibling groups of two or more foster children, thus ensuring that important sibling relationships are preserved. The maintenance of sibling relationships, as described in Section 16002 of the Welfare and Institutions Code, is a public policy priority.



(c) A recent change to Section 2341 of the Probate Code now requires as of January 1, 2000, that all “private professional guardians” register with the Statewide Registry and reregister every three years thereafter, and be subject to the payment of a registration and reregistration fee. “Private professional guardians” are defined as all unrelated persons appointed as guardians of the person, the estate, or both the person and the estate of two or more wards. This fee has been initially established at three hundred eighty-five dollars (\$385) every three years.

(d) This required registration fee presents a financial hardship for existing foster parents who are guardians of two or more former foster children, and acts as a financial deterrent to foster parents considering guardianship for sibling groups in their care.

(e) Certain nonrelated adults who are appointed guardians of the person of foster children or children who are at risk of entry into foster care by juvenile or probate court are not the intended population to be monitored by the Statewide Registry. When nonrelated guardians are in receipt of assessment and case management services by the county welfare department pursuant to Section 11405 of the Welfare and Institutions Code there are sufficient safeguards in place to monitor the suitability and appropriateness of those nonrelated guardians of former foster care children or those children at risk of foster care placement.

(f) Therefore, it is the intent of the Legislature to exempt from the Statewide Registry those nonrelated guardians of the person of minors who were appointed by the juvenile court pursuant to Section 366.26 of the Welfare and Institutions Code, or appointed by the probate court pursuant to Section 1514 of the Probate Code and in receipt of AFDC-FC payments and case management services from the county welfare department, as evidenced by a Notice of Action of AFDC-FC eligibility.

SEC. 2. Section 1513.2 is added to the Probate Code, to read:

1513.2. (a) To the extent resources are available, the court shall implement procedures, as described in this section, to ensure that every guardian annually completes and returns to the court a status report, including the statement described in subdivision (b). A guardian who willfully submits any material information required by the form which he or she knows to be false shall be guilty of a misdemeanor. Not later than one month prior to the date the status report is required to be returned, the clerk of the court shall mail to the guardian by first-class mail a notice informing the guardian that he or she is required to complete and return the status report to the court. The clerk shall enclose with the letter a blank status report form for the guardian to complete and return by mail. If the status report is not completed and returned as required, or if the court finds, after a status report has been completed and returned, that further information is needed, the court shall attempt to



obtain the information required in the report from the guardian or other sources. If the court is unable to obtain this information within 30 days after the date the status report is due, the court shall either order the guardian to make himself or herself available to the investigator for purposes of investigation of the guardianship, or to show cause why the guardian should not be removed.

(b) The Judicial Council shall develop a form for the status report. The form shall include the following statement: “A guardian who willfully submits any material information required by this form which he or she knows to be false is guilty of a misdemeanor.” The form shall request information the Judicial Council deems necessary to determine the status of the guardianship, including, but not limited to, the following:

- (1) The guardian’s present address.
- (2) The name and birth date of the child under guardianship.
- (3) The name of the school in which the child is enrolled, if any.
- (4) If the child is not in the guardian’s home, the name, relationship, address, and telephone number of the person or persons with whom the child resides.
- (5) If the child is not in the guardian’s home, why the child was moved.

(c) The report authorized by this section is confidential and shall only be made available to persons who have been served in the proceedings or their attorneys. The clerk of the court shall implement procedures for the limitation of the report exclusively to persons entitled to its receipt.

(d) The Judicial Council shall report to the Legislature no later than December 31, 2004, regarding the costs and benefits of utilizing the annual status report.

SEC. 3. Section 2341 of the Probate Code is amended to read:

2341. (a) As used in this article, “private professional conservator” means a person or entity appointed as conservator of the person or estate, or both, of two or more conservatees at the same time who are not related to the conservator by blood or marriage, except a bank or other entity authorized to conduct the business of a trust company, or any public officer or public agency including the public guardian, public conservator, or other agency of the State of California. In the case of an entity, all natural persons who are authorized by the entity to perform the functions of a conservator shall comply with this article. The court may, at its discretion, require any person who is the conservator for only one conservatee not related to the conservator by blood or marriage to comply with this article, and in that case, references in this article to a “private professional conservator” includes those persons.



(b) As used in this article, “private professional guardian” means a person or entity appointed as guardian of the person or estate, or both, of two or more wards at the same time who are not related to the guardian by blood or marriage, except a bank or other entity authorized to conduct the business of a trust company, or any public officer or public agency including the public guardian, public conservator, or other agency of the State of California. In the case of an entity, all natural persons who are authorized by the entity to perform the functions of a guardian shall comply with this article. The court may, at its discretion, require any person who is the guardian for only one ward not related to the guardian by blood or marriage to comply with this article, and in that case, references in this article to a “private professional guardian” includes those persons.

As used in this article, “private professional guardian” does not include a nonrelated guardian of the person of a minor appointed by the court, where the appointment results from the selection of a permanency plan for a dependent child or ward pursuant to Section 366.26 of the Welfare and Institutions Code. It also does not include a nonrelated guardian of the person of a minor appointed by the court pursuant to Section 1514 if that child is in receipt of AFDC-FC payments and case management services from the county welfare department, as evidenced by a Notice of Action of AFDC-FC eligibility.

(c) As used in this article, “private professional trustee” means a nonprofit charitable corporation appointed as trustee pursuant to Section 15604.

SEC. 4. Section 2854 of the Probate Code is amended to read:

2854. (a) This chapter does not apply to any public conservator, public guardian, or to any conservator or guardian who is related to the conservatee or ward by blood, marriage, or adoption. This chapter does not apply to any person who is not required to file information with the county clerk pursuant to Section 2340, to any person or entity subject to the oversight of a local government, including an employee of a city, county, or city and county, or to any person or entity subject to the oversight of the state or federal government, including a supervised financial institution.

(b) This chapter does not apply to any conservator who resided in the same home with the conservatee immediately prior to the condition or event that gave rise to the necessity of a conservatorship. This subdivision does not create any order or preference of appointment, but simply exempts a conservator described by this subdivision from registration.

(c) This chapter does not apply to a nonrelated guardian of the person of a minor appointed by the court as the result of the selection of a



permanency plan for a dependent child or ward pursuant to Section 366.26 of the Welfare and Institutions Code. It also does not include a nonrelated guardian of the person of a minor appointed pursuant to Section 1514 if that child is in receipt of AFDC-FC payments and case management services from the county welfare department, as evidenced by a Notice of Action of AFDC-FC eligibility.

SEC. 5. Section 366.4 of the Welfare and Institutions Code is amended to read:

366.4. (a) Any minor for whom a guardianship has been established resulting from the selection or implementation of a permanent plan pursuant to Section 366.26 is within the jurisdiction of the juvenile court. For those minors, Part 2 (commencing with Section 1500) of Division 4 of the Probate Code, relating to guardianship, shall not apply. If no specific provision of this code or the California Rules of Court is applicable, the provisions applicable to the administration of estates under Part 4 (commencing with Section 2100) of Division 4 of the Probate Code govern so far as they are applicable to like situations.

(b) Nonrelated legal guardians of the person of a minor established as a result of a permanent plan selected pursuant to Section 366.26 shall be exempt from the provisions of Sections 2850 and 2851 of the Probate Code.

SEC. 6. Section 11405 of the Welfare and Institutions Code is amended to read:

11405. (a) AFDC-FC shall be paid to an otherwise eligible child living with a nonrelated legal guardian, provided that the legal guardian cooperates with the county welfare department in all of the following:

(1) Developing a written assessment of the child's needs.

(2) Updating the assessment no less frequently than once every six months.

(3) Carrying out the case plan developed by the county.

(b) When AFDC-FC is applied for on behalf of a child living with a nonrelated legal guardian the county welfare department shall do all of the following:

(1) Develop a written assessment of the child's needs.

(2) Update those assessments no less frequently than once every six months.

(3) Develop a case plan that specifies how the problems identified in the assessment are to be addressed.

(4) Make visits to the child as often as appropriate, but in no event less often than once every six months.

(c) Where the child is a parent and has a child living with him or her in the same eligible facility, the assessment required by paragraph (1) of subdivision (a) shall include the needs of his or her child.



(d) Nonrelated legal guardians of eligible children who are in receipt of AFDC-FC payments described in this section shall be exempt from the requirement to register with the Statewide Registry of Private Professional Guardians pursuant to Sections 2850 and 2851 of the Probate Code.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

